THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 17868 OF 2000

Dated 20th June, 2007

Between:

Vakalapudi Grampanchayat,
represented by its Sarpanch Sri G.Srinivasa Rao,
R/o Vakalapudi Kakinada Rural Mandal,
East Godavari District.

…Petitioner

And

State of A.P. represented by its Secretary to
Government, Panchayat Raj Department,
Secretariat, Hyderabad and others.

…Respondents.

ORAL ORDER:

This writ petition has been filed for issuance of a writ of mandamus declaring the action of the respondents in transferring certain powers and functions in favour of the Andhra Pradesh Industrial Infrastructure Corporation Limited and declaring the action of the respondent No.2 in sub-delegating powers to the Advisory Committee in collecting revenue from the Industrial Establishments as arbitrary and illegal.

The case of the petitioner is that the Andhra Pradesh Industrial Infrastructure Corporation Limited has identified Vakalpudi Grampanchayat for establishment of Industrial Estates as it is best suited for industrial activity in view of its close proximity with Kakinada township. There are nearly 40 industrial sheds. The gram panchayat was maintaining civic amenities to the best of its abilities without any complaints and the Gram Panchayat, Vakalapudi has been taking due care with regard to electricity. It was also taking care in maintaining roads, water supply and sanitary needs of the gram panchayat. When the things stood thus, the Government decided to transfer certain powers and functions of the Grama Panchayat under Section 147 of the A.P.Gram Panchayat Act, 1994 to the A.P. Infrastructure Corporation Limited in the maintenance of industrial estates/industrial development areas and autonagars throughout the state of A.P. Pursuant to the same, show cause notice dated 11.11.1997 was issued to the petitioner- Gram Panchayat for transfer of certain powers and functions of gram panchayat to the A.P. Industrial Infrastructure Corporation. Pursuant to the said show cause notice, the gram panchayat passed resolution on 19.11.1997 opposing such transfer and the same was communicated to the Collector, Panchayat Wing

on 20.11.1997, but, however, without considering the objections raised by the Gram Panchayat, the Government issued G.O.Ms.No.109, dated 9th March, 1998 transferring Industrial Development area in Vakalapudi to the Corporation. By virtue of transfer, the Corporation is entitled to collect the revenues and the revenue shall be shared in the ratio of 35:65 between the concerned Gram Panchayat and the Corporation. Consequent thereto, the Gram Panchayat is losing revenue and it is impossible for the Gram Panchayat to cater to the needs of its residents. It is not in a position to maintain the basic civic necessities of Vakalapudi Grampanchayat. It is further submitted that in the adjoining industrial area, the Corporation has constructed big housing colony for the workers and the same is being maintained by the Gram Panchayat. Since most of the residents belong to weaker sections, the Gram Panchayat is not able to collect full house tax. Therefore, because of heavy financial crisis, it would be impossible for the Gram Panchayat to provide civic amenities to the already existing village residents and also to the industrial colony. It is further stated that the second respondent has issued proceedings dated 10.10.1998 whereunder the corporation was further delegated the powers of collecting house taxes in favour of the Advisory committee. Such power is not available to the second respondent. Under the Panchayat Raj Act, when once a village has been constituted under Section 3 of the Panchayat Raj Act, it cannot be altered, increased or diminished in size but only by way of notification the Commissioner is empowered to form a new village by separation of local area from any village or by uniting two or more villages or parts of any village. The action of the respondent corporation in constituting advisory committee and delegating its powers to collect all its revenues is arbitrary, illegal and not permissible. Hence the writ petition.

Counter-affidavit has been filed by the 2nd respondent –

Industrial Infrastructure Corporation stating that the main objects of the Corporation is to set up/develop industrial areas in the State of Andhra Pradesh providing developed plots/sheds with the required infrastructural facilities for allotment of the same to entrepreneurs for setting up of their projects. Though the local bodies collect property tax, fees, charges etc. from the industrial units situated in the industrial areas of the Corporation, they have hardly taken up maintenance works in the industrial areas. The Government issued G.O.Ms.No.109, Panchayat Raj & Rural Development dated 9.3.1998 transferring certain powers and functions of the Gram Panchayats in favour of the Corporation in favour of the Corporation in the specified industrial areas subject to the condition that 35% of the house tax collected by Corporation in the particular Industrial Areas shall be remitted to the respective Gram Panchayats. The powers so transferred to the Corporation include assessment, levy, demand and collection of house tax, granting building permissions, removal of encroachment. The rest of the powers and functions in the industrial areas are continued to be with the respective Gram Panchayat only. Thus the Corporation has come to be a local authority in limited sense in the limited area of the Industrial Estate and by such an arrangement, it cannot be construed that the Corporation has become a separate and independent Gram Panchayat. The petitioner has not submitted resolution of the Vakalapudi Gram Panchayat authorizing him to file the present writ petition. The contention of the petitioner that the Gram Panchayat was maintaining civic amenities in the industrial areas is not correct. The further contention of the petitioner that the Gram Panchayat has been taking due care with regard to electricity which is an important source of energy for running industries is false. The Government after considering the objections of the Gram Panchayat only decided to empower the Corporation with certain powers and functions of Gram Panchayats in G.O.Ms.No.109, dated 9.3.1998. Under the said G.O., the Corporation is required to remit 35% of the

house tax collected in the industrial areas to the concerned Gram Panchayat. The contention of the petitioner that consequent to transfer of powers of Gram Panchayat in favourof the Corporation, it is losing revenue and it has become impossible for the Gram Panchayat to cater to the needs of the residents is false as the Gram Panchayat did not spend any amount in maintenance of the industrial area though it collected taxes, charges and fees from the industrial units. The fact that 35% of the house tax collected by the Corporation is required to be deposited with the gram panchayat shows that Government have ensured that the Gram Panchayats continue to get revenue from the industrial areas without being under obligation to maintain the same. Empowerment of the Corporation with certain powers of Gram Panchayat is in public interest. The petitioner did not disclose about the details of maintenance works taken up by the Gram Panchayat in the industrial areas and therefore its contention that the revenue from the industrial areas goes to the Corporation but the responsibilities fall on the Gram Panchayat is not correct. There is no infraction of Article 14 of the Constitution of India.

It is stated that the Corporation has been encouraging service societies formed by the industrialists to assist the Corporation in collection of the house tax in the industrial areas so as to take up prompt and adequate maintenance works. This is a novel mechanism introduced by the Corporation to ensure that the total revenue is collected and spent to attain the objective instead of resorting to appoint employees for collection of taxes. The ultimate control and management of the amount of revenue vests with the Corporation, which is spent in consultation with the rate payers through their societies. All statutory and regulatory powers and functions under the A.P. Panchayat Raj Act, 1994 remain with the Corporation and are exercised by the official of the Corporation. Therefore, the allegations of the petitioner that the Corporation has delegated its power to another committee are not correct. It is also

stated that the main object in empowering the Corporation with certain powers and functions of the Gram Panchayats is to facilitate prompt and adequate maintenance of the industrial areas to ensure development of industries and therefore, the decision of the Government is fair and just.

The main grievance of the petitioner is that major source of revenue of Gram Panchayat was curtailed by the decision of the State Government by transferring revenue generating industrial area to the Corporation and consequently, the Gram Panchayat is facing heavy financial crisis, as a result of which, it would be impossible for it to provide civic amenities to the already existing village residents and also to the industrial colony. Therefore, the action of the respondents in transferring the powers and functions of the Gram panchayat in favour of the Andhra Pradesh Industrial Infrastructure Corporation Limited is arbitrary and illegal.

On the other hand, it is the case of the 2nd respondent that the main objects of the Corporation is to set up/develop industrial areas in the State of Andhra Pradesh providing developed plots/sheds with the required infrastructural facilities for allotment of the same to entrepreneurs for setting up of their projects. Though the local bodies collect property taxes, they hardly take up maintenance works in the industrial areas and therefore, Government issued G.O.ms.No.109, dated 9.3.1998 transferring the powers of Vakalapudi Gram Panchayat in favour of the Corporation, however, subject to the condition that 35% of the house tax collected by the Corporation shall be remitted to the Gram Panchayat. The fact that 35% of the house tax collected by the Corporation is required to be deposited with the Gram Panchayt shows that Government have ensured that the Gram Panchayats continued to get revenue from the industrial areas without being under obligation to maintain the same.

The Government, on the request made by the Chairman and Managing Director, A.P.Industrial Infrastructure Corporation for

declaring it as Local Authority, transferred the powers and functions of Vakalapudi Gram Panchayat to the control of A.P. Industrial Infrastructure Corporation Limited within the limits of the Industrial Estates for their systematic and regular maintenance in the interest of speedy development of industries, subject, however, to the condition that the revenue shall be shared in the ratio of 35: 65 between the Gram Panchayat and the A.P. Industrial Infrastructure Corporation Limited, after considering the objections of the Gram Panchayat.

Section 147 of the Andhra Pradesh Panchayat Raj Act, 1994 which empowers the Government to direct any power or function vested in the gram panchayat by or under the said Act shall be transferred to the Mandal Parishad, Zilla Parishad or the other local authority, reads thus:

> "147. Transfer of functions of gram panchayats to other local authorities or vice versa:- Notwithstanding anything in this Act, or in any law relating to other local authorities, the Government may, in consultation with the Mandal Parishad or Zilla Parishad or other local authority, as the case may be, and the gram panchayat concerned, by notification and subject to such restrictions and conditions and to such control and revision as may be specified therein, direct that-
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> (a) any power or function vested in the gram panchayat by or under this Act, shall be transferred to and exercised and performed by the Mandal Paishad or Zilla parishad or the local authority; and
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> (b) any power or function vested in the Mandal parishad or Zilla Parishad or the other local authority shall be transferred to and exercised and performed by a gram panchayat.
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> Explanation:- For the purposes of this section, 'local authority' includes the Andhra Pradesh Industrial Infrastructure Corporation Limited."

Therefore, in exercise of its power under Section 147 of the A.P.Panchayat Raj Act, 1994, the Government transferred the powers and functions of Vakalapudi Gram Panchayat to the control of A.P. Industrial Infrastructure Corporation Limited, which is a local authority, within the limits of the Industrial Estates for their systematic and regular maintenance in the interest of speedy development of industries. Before transferring the said powers, the Government called for the objections from the Vakalapudi Gram Panchayat and considered the same. The Government in order to

protect the revenue of the gram panchayat has also ordered that the revenue collected by the A.P.Industrial Infrastructure Corporation in the industrial area should also be remitted to the extent of 35% to the gram panchayat. Hence, it cannot be said that the action of the government in transferring the powers of the Vakalapudi Gram Panchayat with respect to Vakalapudi industrial area is illegal or arbitrary. The Government is also well within its power in issuing G.O.Ms.No.109, dated9.3.1998.

For the reasons aforementioned, there is no merit in this writ petition and the same is accordingly dismissed. No costs.

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20-6-2007

R.SUBHASH REDDY, J.

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